IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18908 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMAD ASHRAF @ HASU ABDUL MALEK THR' BROTHER - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 18/10/2005

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India, challenges the order of detention dated 22.08.2005 passed by the Commissioner of Police, Surat City in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, “the Act”) detaining the detenue as defined under Section 2 (c) of the Act as dangerous person, as illegal, unconstitutional, and violative of Articles 14, 19, 21 and 22 of the Constitution of India.

2. Grounds supplied alongwith the Order of detention on the same date reveal, registration of four offences out of which two offences were registered with Chowk Bazar Police Station and two offences were registered with Athwa Line

Police Station vide different C.Rs. for the offences punishable under Sections 379 and 114 of the Indian Penal Code. It also state about the statements of two witnesses dated 08.07.2005 and 09.07.2005, which refer to the illegal and criminal activities of the detenue, specifically alleging about the usage of abusive language and administrating threat to the witnesses and also asking for money from the witnesses. Thus, the conduct of the detenue is found to be prejudicial and detrimental to the public orders and after considering inadequacy of other alternative remedy under ordinary law, the detaining authority think it fit to exercises powers under the Act.

3. Learned advocate for the detenue has contended that the order of detention is required to be quashed and set aside on the ground that the privilege claimed under Section 9(2) of the Act is not justified, inasmuch as,

satisfaction of the detaining authority qua each statement and qua identity of each informant is not genuine. It is not important that the detaining authority simply verifies the statement of the witnesses made before the sponsoring authorities, but, the detaining authority has to verify about the events/ incidences narrated by such witnesses and to inquire on the basis of available material independently. Absence of such exercise by the detaining authority vitiates the subjective satisfaction and to that extent, order of detention is to be quashed and set aside.

In support of his arguments, he relied on the judgment reported in 2000 (4) GLR page 3236 and submitted that mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under the circumstances, can be of no virtue in absence of contemporaneous material.

He has also canvassed other grounds to

quash and set aside the order of detention about non-application of mind by the detaining authority in passing the order of detention dated 22.08.2005, immediately after the statements of the witnesses were verified on 17.08.2005, which is nothing, but mechanical exercise of powers by the authority and in support of this submission, he relied on the decision in the case of Ranubhai Bhikhabhai Bharvad (Vekaria) Vs. State of Gujarat reported in 2000 (3) GLR page 2696.

4. Learned Asst.Government Pleader, Ms. Hansa B. Punani has supported the order of detention and submitted that the verification of correctness and genuineness of the statements of witnesses was satisfactorily done by the detaining authority and therefore, it cannot be said that privilege under Section 9(2) of the Act is wrongly claimed.

5. Having heard the learned counsels for the respective parties and on perusal of the record, I am inclined to accept the submissions of the learned Advocate for the petitioner, qua the privilege under Section 9(2) of the Act as claimed by the detaining authority is not justified on the scrutiny of the record and even bare perusal of the order of detention and reiteration of certain submissions in affidavit in reply, what is stated by the detaining authority about privilege under Section 9(2) of the Act is concerned, is denial of non-application of mind and it was reiterated that exercise to verify the genuineness and correctness of the fear expressed by the witnesses was ascertained. As righly relied on by the learned advocate for the petitioner, the law laid down by this Court in the decision reported in 2000 (4) 3236 (Supra), in para 11 of the said Judgement, after reproducing excerpts of the decision of

the full bench of our High Court, as reported in 1994 (1) GLR Page 761, where, antoher decision of full bench in the case of **Bai Amina W/o. Abdul Rahim Alla Vs. State of Gujarat reported in 1981 GLR page 1186** was considered and it was held that while exercising powers under Section 9(2) of the Act, for claiming privilege, it is expected of the detaining authority to consider the general documents, character, antecedents, criminal tendency of propensity etc. of the detenue and the affidavit in reply of that case disclosed, recording by the detaining authority of the statement of the witnesses about the fear expressed by them, which was found to be genuine and correct and nothing beyond that. No independent steps were taken by the detaining authority to consider the above mentioned factors for ascertaining the credentials of the detenue about his criminal tendency etc. and subjective satisfaction was arrived at. The

learned Single Judge quashed and set aside the order of detention in that case on the basis that the privilege claimed under Section 9(2) of the Act was devoid of any reasonable justification.

In the present case also, it is only disclosed about verification of genuineness and/or correctness of the statements of the witnesses about the fear expressed by them and no independent exercise is undertaken to verify the requirement of antecedents, character and background of the detenue, about the events narrated by the witnesses and therefore, the impugned order of detention is to be quashed and set aside in absence of any contemporaneous material and proper exercise of power to ascertain the correctness and genuineness of the statements independently.

6. This petition is therefore allowed. The impugned order of detention dated 22.08.2005 passed by the Police Commissioner, Surat City, respondent no.2 herein, is quashed and set aside and the detenue Mohmmad Ashraf @ Hasu Abdul Malek is hereby set at liberty forthwith, if he is not required in connection with any other case by any other authority.

7. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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